

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED  
AUG 23 2007  
U.S. DISTRICT COURT  
ELKINS WV 26241

JAMES A. LUCAS,

Petitioner,

v.

Civil Action No. 2:05cv61

THOMAS McBRIDE, Warden,

Respondent.

ORDER

It will be recalled that on August 2, 2007, Magistrate Judge Kaull filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objections to the Report and Recommendation on August 10, 2007.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition For Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, wherein Petitioner raises as grounds several alleged trial errors, as well as the issues raised by Respondent in his Motion to Dismiss and Motion for Summary Judgment, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Upon consideration of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not thoroughly considered by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court on the Respondent's Motion to Dismiss and Motion for Summary Judgment in this action. Therefore, it is

**ORDERED** that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Respondent's Motion to Dismiss and Motion for Summary Judgment be, and the same hereby are, **GRANTED**. It is further

**ORDERED** that Petitioner's §2254 petition be, and the same hereby is, **DENIED** and **DISMISSED WITH PREJUDICE**, and that the civil action be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Defendant. It is further

**ORDERED** that the Petitioner's request for an investigator shall be, and the same hereby is, **DENIED** as moot. It is further

**ORDERED** that if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis.

ENTER: ~~August 23~~ <sup>August 23</sup>, 2006

  
United States District Judge